

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NICHOLAS KELLY,

Petitioner,

Case Number 2:10-CV-14280

Honorable Lawrence P. Zatkoff

v.

MITCH PERRY,

Respondent,

**ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY AND
APPLICATION TO PROCEED *IN FORMA PAUPERIS***

Petitioner has appealed the Court's judgment and order denying his petition for a writ of habeas corpus [dkt 14]. Currently pending before the Court is Petitioner's motion for certificate of appealability and application to proceed *in forma pauperis* on appeal [dks 15 & 16]. In order to obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). 28 U.S.C. § 1915(a)(3) further provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In the Court's order denying his petition for a writ of habeas corpus, the Court expressly certified in writing the following:

For the reasons stated in this opinion, the Court will deny petitioner a certificate of appealability because jurists of reason would not find this Court's resolution of his claims to be debatable. . . . The Court will also deny petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous.

[dkt 12].

Accordingly, for the reasons relied on by the Court in the order denying Petitioner's petition for a writ of habeas corpus, the Court finds that Petitioner's motion for certificate of appealability and application to proceed *in forma pauperis* on appeal [dkts 15 & 16] are DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on May 1, 2012.

S/Marie E. Verlinde
Case Manager
(810) 984-3290